



February 8, 2005

SENATE BILL No. 499

DIGEST OF SB 499 (Updated February 7, 2005 11:31 am - DI 102)

Citations Affected: IC 3-5; IC 3-6; IC 3-8; IC 3-10; IC 3-11; IC 3-12; IC 3-14; noncode.

Synopsis: Voting equipment integrity and upgrades. Makes changes regarding the certification process for voting systems and establishes a uniform date for the expiration of voting system certifications. Establishes a voting systems technical oversight program. Requires county election boards to perform public tests of electronic voting systems before election day. Requires precinct election boards to document certain information concerning optical scan tabulation systems before the polls open. Establishes civil penalties for violations of statutes concerning the use of voting systems in Indiana elections. Requires a county that uses a punch card voting system to enter into a contract, not later than July 1, 2005, for a voting system certified for use in Indiana elections for delivery not later than January 1, 2006, and allows the secretary of state to purchase a voting system for the county if the county does not act. Permits a voting system previously certified for use in Indiana to continue to be used after the certification expires if the voting system complies with the requirements of HAVA. Repeals obsolete references to lever voting machines, punch card voting systems, and paper ballots formerly printed by the election division.

Effective: Upon passage; July 1, 2005.

Lawson C

January 18, 2005, read first time and referred to Committee on Elections and Civic Affairs.
February 7, 2005, amended, reported favorably — Do Pass.

SB 499—LS 7838/DI 102+



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February 8, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 499

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-5-2-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 3. "Ballot" means:
3 (1) the paper ballot prepared, printed, and supplied for use at an
4 election;
5 (2) the ballot label prepared, printed, and supplied for use on the
6 front of a ~~voting machine~~ or an electronic voting system; or
7 (3) the ballot card prepared, printed, and supplied for use in a
8 ballot card voting system.
9 SECTION 2. IC 3-5-2-4 IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2005]: Sec. 4. "Ballot card" refers to ~~either a~~
11 ~~punch card ballot~~ or an optical scan ballot.
12 SECTION 3. IC 3-5-2-4.5 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. "Ballot card voting
14 system" refers to ~~either a punch card voting system~~ or an optical scan
15 voting system.
16 SECTION 4. IC 3-5-2-5 IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2005]: Sec. 5. "Ballot label" means:

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- (1) the printed strip or sheet of cardboard or paper, supplied for use on ~~a voting machine or an~~ electronic voting system, that contains the names of the candidates and the public questions on the ballot; or
- (2) the ~~booklet, pamphlet, or other~~ material, supplied for use with a ballot card voting system, that contains those names and questions.

SECTION 5. IC 3-5-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. "Marking device" means:

- ~~(1) an apparatus in which paper ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter;~~
- ~~(2) (1) a pencil for marking a paper ballot or ballot card; or~~
- ~~(3) (2) an approved touch-sensitive device that automatically registers a vote on an electronic voting system.~~

SECTION 6. IC 3-5-2-48.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 48.5. "Testing authority" means an independent test authority ~~as described in: or independent laboratory:~~

- (1) ~~as described in the~~ Voting System Standards issued by the Federal Election Commission on April 30, 2002; or
- (2) ~~other more recent voting systems standards adopted by the commission under IC 3-11-15-13; accredited under Section 231 of HAVA (42 U.S.C. 15371).~~

SECTION 7. IC 3-5-2-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 52. "Voting method" means the use of:

- (1) paper ballots;
- ~~(2) voting machines;~~
- ~~(3) (2) ballot card voting systems;~~
- ~~(4) (3) electronic voting systems; or~~
- ~~(5) (4) any combination of these;~~

to register votes in a precinct.

SECTION 8. IC 3-6-4.2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. The election division shall do the following:

- ~~(1) Prepare and distribute paper ballots for the election or retention of persons to federal and state offices and for public questions in compliance with this title;~~
- ~~(2) (1) Maintain complete and uniform descriptions and maps of all precincts in Indiana.~~
- ~~(3) (2) Promptly update the information required by subdivision~~

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~~(2)~~ (1) after each precinct establishment order is filed with the commission under IC 3-11-1.5.

~~(4)~~ (3) Issue media watcher cards under IC 3-6-10-6.

~~(5)~~ (4) Prepare and transfer to the department of state revenue voter registration affidavits for inclusion in state adjusted gross income tax booklets under IC 6-8.1-3-19.

~~(6)~~ After December 31, 2003, (5) Serve in accordance with 42 U.S.C. 1973ff-1(b) as the office in Indiana responsible for providing information regarding voter registration procedures and absentee ballot procedures to absent uniformed services voters and overseas voters.

~~(7)~~ (6) As required by 42 U.S.C. 1973ff-1(c), submit a report to the federal Election Assistance Commission not later than ninety (90) days after each general election setting forth the combined number of absentee ballots:

(A) transmitted to absent uniformed services voters and overseas voters for the election; and

(B) returned by absent uniformed services voters and overseas voters and cast in the election.

~~(8)~~ (7) Implement the state plan in accordance with the requirements of HAVA (42 U.S.C. 15401 through 15406) and this title, and appoint members of the committee established under 42 U.S.C. 15405.

~~(9)~~ (8) Submit reports required under 42 U.S.C. 15408 to the federal Election Assistance Commission concerning the use of federal funds under Title II, Subtitle D, Part I of HAVA.

SECTION 9. IC 3-6-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) Each county election board, in addition to duties otherwise prescribed by law, shall do the following:

(1) Adopt and amend a written plan to implement NVRA within the county.

(2) Conduct all elections and administer the election laws within the county, except as provided in IC 3-8-5 and IC 3-10-7 for town conventions and municipal elections in certain small towns.

(3) Prepare all ballots. ~~except those prepared by the election division.~~

(4) Distribute all ballots and pasters to all of the precincts in the county.

(b) This subsection does not apply to pasters to be attached to ballots during the final three (3) days before an election. Not later than the Monday before distributing ballots, pasters, and voting systems to

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the precincts in the county, the county election board shall notify the county chairman of each major political party and, upon request, the chairman of any other bona fide political party in the county, that sample ballots and pasters are available for inspection.

SECTION 10. IC 3-6-6-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 34. (a) In a precinct where the voting is by any voting method except entirely by paper ballot, the poll clerks of the precinct shall perform all the duties connected with voting by ~~voting machine~~, ballot card voting system or electronic voting system, and the assistant poll clerks shall perform all the duties connected with voting by paper ballot. It is necessary for only the two (2) assistant poll clerks to place their initials on the back of the paper ballots.

(b) The poll clerks shall tally the vote cast by paper ballot, and they alone shall sign the election certificates and returns. However, the precinct election board may call upon the assistant poll clerks to assist the poll clerks in any of their duties.

SECTION 11. IC 3-8-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. Candidates shall be nominated or elected at a state convention by using ~~voting machines~~, ballot card systems or electronic voting systems. However, if there is no contest for an office, the nomination or election may be by motion and acclamation.

SECTION 12. IC 3-8-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. The state chairman of the political party holding a state convention shall appoint an inspector and two (2) poll clerks to attend each voting ~~machine~~ or system at the convention. Each candidate may have one (1) watcher at each ~~voting machine~~ or system to check the ~~voting machine~~ or system before and after each ballot and to check the work of any election officer. The inspector and poll clerks:

- (1) shall take an oath to perform their duties faithfully and to the best of their abilities before anyone entitled to administer an oath;
- (2) must be qualified in relationship to candidates in the same manner as precinct election officers under IC 3-6-6-7; and
- (3) are subject to the same penalties as precinct election officers.

SECTION 13. IC 3-10-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. Each county election board shall prepare and distribute separate primary paper ballots for each political party participating in a primary election equal in number to one hundred percent (100%) of the number of votes cast by the party in each precinct at the last general election. If ~~voting~~

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1 ~~machines~~, ballot card voting systems or electronic voting systems are
 2 used, the board shall determine the number of emergency paper ballots
 3 to be printed and furnished to the precincts.

4 SECTION 14. IC 3-10-1-18 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) Except as
 6 provided by subsection (b), the names of all candidates for each office
 7 who have qualified under IC 3-8 shall be arranged in alphabetical order
 8 by surnames under the designation of the office.

9 (b) This subsection applies to a county having a population of more
 10 than four hundred thousand (400,000) but less than seven hundred
 11 thousand (700,000). The names of all candidates for each office who
 12 have qualified under IC 3-8, except for a school board office, precinct
 13 committeeman, or state convention delegate, shall be arranged in
 14 random order by surnames under the designation of the office. The
 15 random order shall be determined using a lottery. The lottery held in
 16 accordance with this subsection shall be conducted in public by the
 17 county election board. The lottery shall be held not later than fifteen
 18 (15) days following the last day for a declaration of candidacy under
 19 IC 3-8-2-4. All candidates whose names are to be arranged by way of
 20 the lottery shall be notified at least five (5) days prior to the lottery of
 21 the time and place at which the lottery is to be held. Each candidate
 22 may have one (1) designated watcher and each county political party
 23 may have one (1) designated watcher who shall be allowed to observe
 24 the lottery procedure.

25 (c) For paper ballots, the left margin of the ballot for each political
 26 party must show the name of the uppermost candidate printed to the
 27 right of the number 1, the next candidate number 2, the next candidate
 28 number 3, and so on, consecutively to the end of the ballot as
 29 prescribed in section 19 of this chapter. The same order shall be
 30 followed for the printing of ballot labels and their placement on the
 31 ~~voting machine~~ or electronic voting system and for the printing of
 32 ballot cards.

33 (d) This subsection applies to a county having a population of more
 34 than four hundred thousand (400,000) but less than seven hundred
 35 thousand (700,000). If there is insufficient room on a row to list each
 36 candidate of a political party, a second or subsequent row may be
 37 utilized. However, a second or subsequent row may not be utilized
 38 unless the first row, and all preceding rows, have been filled.

39 SECTION 15. IC 3-10-1-19 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) The ballot for
 41 a primary election shall be printed in substantially the following form
 42 for all the offices for which candidates have qualified under IC 3-8:

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OFFICIAL PRIMARY BALLOT

_____ Party

To vote for a person make a voting mark (X or ✓) on or in the box
before the person's name in the proper column.

Vote for one only

Representative in Congress

☐ (1) AB _____☐ (2) CD _____☐ (3) EF _____☐ (4) GH _____

(b) The offices with candidates for nomination shall be placed on
the primary election ballot in the following order:

(1) Federal and state offices:

(A) President of the United States.

(B) United States Senator.

(C) Governor.

(D) United States Representative.

(2) Legislative offices:

(A) State senator.

(B) State representative.

(3) Circuit offices and county judicial offices:

(A) Judge of the circuit court, and unless otherwise specified
under IC 33, with each division separate if there is more than
one (1) judge of the circuit court.

(B) Judge of the superior court, and unless otherwise specified
under IC 33, with each division separate if there is more than
one (1) judge of the superior court.

(C) Judge of the probate court.

(D) Judge of the county court, with each division separate, as
required by IC 33-30-3-3.

(E) Prosecuting attorney.

(F) Clerk of the circuit court.

(4) County offices:

(A) County auditor.

(B) County recorder.

(C) County treasurer.

(D) County sheriff.

(E) County coroner.

(F) County surveyor.

(G) County assessor.

(H) County commissioner.

(I) County council member.

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(5) Township offices:

- (A) Township assessor.
- (B) Township trustee.
- (C) Township board member.
- (D) Judge of the small claims court.
- (E) Constable of the small claims court.

(6) City offices:

- (A) Mayor.
- (B) Clerk or clerk-treasurer.
- (C) Judge of the city court.
- (D) City-county council member or common council member.

(7) Town offices:

- (A) Clerk-treasurer.
- (B) Judge of the town court.
- (C) Town council member.

(c) The political party offices with candidates for election shall be placed on the primary election ballot in the following order after the offices described in subsection (b):

- (1) Precinct committeeman.
- (2) State convention delegate.

(d) The following offices and public questions shall be placed on the primary election ballot in the following order after the offices described in subsection (c):

- (1) School board offices to be elected at the primary election.
- (2) Other local offices to be elected at the primary election.
- (3) Local public questions.

(e) The offices and public questions described in subsection (d) shall be placed in a separate column on the ballot if voting is by paper ballot, ballot card voting system, or electronic voting system. ~~or in a separate column of ballot labels if voting is by voting machine.~~

(f) A public question shall be placed on the primary election ballot in the following form:

(The explanatory text for the public question,
if required by law.)

"Shall (insert public question)?"

☐ YES

☐ NO

SECTION 16. IC 3-10-1-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. In a primary election in a county having a city, ~~voting machines~~, ballot card voting systems and electronic voting systems shall be employed as available and adaptable and shall be supplemented by paper ballots as necessary.

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However, this section does not require the purchase of ~~voting machines~~, ballot card voting systems or electronic voting systems for a primary election.

SECTION 17. IC 3-10-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. If ~~voting machines~~ or electronic voting systems are used in a precinct, one (1) of the poll clerks shall give a printed political party identification card to a voter after the voter signs the poll list. Before entering the ~~voting machine~~ or voting booth, the voter must give the party identification card to a judge, and the judge shall set or have the ~~voting machine~~ or electronic voting system set to allow the voter to vote only for the candidates of the voter's party. After the ~~machine~~ or system is set, the voter may register a vote upon it within the time provided under

(1) ~~IC 3-11-12-29.5, for a voting machine; or~~

(2) IC 3-11-14-26. for an electronic voting system.

SECTION 18. IC 3-10-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28. After setting the ~~voting machine~~ or electronic voting system, the judge shall immediately deposit the political party identification card in a sealed container provided for that purpose. After the polls have closed, all party identification cards shall be counted and compared with the total number of votes cast in the election. All party identification cards must be of durable quality and the same color irrespective of the party that is designated.

SECTION 19. IC 3-10-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The names of the candidates of:

(1) a political party;

(2) a group of petitioners under IC 3-8-6; or

(3) a write-in candidate for the office of President or Vice President of the United States under IC 3-8-2-1.5;

for electors of President and Vice President of the United States may not be placed on the ballot.

(b) The names of the nominees for President and Vice President of the United States of each political party or group of petitioners shall be placed:

(1) in one (1) column on the ballot if paper ballots or a ballot card voting system is used;

(2) ~~on one (1) ballot label in one (1) column or row if voting machines are used; or~~

(3) (2) in a separate column on the ballot label if an electronic voting system is used.

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(c) The name of each write-in candidate for the office of President or Vice President of the United States shall be placed as provided under IC 3-11-2-6.

SECTION 20. IC 3-10-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If paper ballots or a ballot card voting system is used, a single square shall be printed in front of a bracket enclosing the names of the nominees for President and Vice President of the United States on the left margin of each separate column of the ballot, immediately opposite the names of the nominees.

(b) The device named and list of nominees of the political party whose nominee received the highest number of votes in that county for secretary of state at the last election shall be placed in the first column on the left side of the ballot if paper ballots or a ballot card voting system is used or, if ~~voting machines~~ or an electronic voting system is used, in the first column or row. The political party whose nominee received the second highest number of votes in that county for secretary of state at the last election shall be placed in the second column or row. Other political parties shall be placed on the ballot in the same order.

(c) If a political party or an independent ticket did not have a candidate for secretary of state in the last election, the party or ticket shall be placed on the ballot after the parties described in subsection (b). If more than one (1) political party or independent ticket that has qualified to be on the ballot did not have a candidate for secretary of state in the last election, each party or independent ticket shall be listed on the ballot in the order in which the party or independent ticket filed a petition of nomination under IC 3-8-6-12.

SECTION 21. IC 3-11-1.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. If a county executive adopts the use of ~~voting machines~~, ballot card voting systems or electronic voting systems in a county in which ~~voting machines~~, ballot card voting systems or electronic voting systems have not been previously used, the county executive may establish precincts after primary election day and before August 1 by combining two (2) or more precincts into one (1) precinct.

SECTION 22. IC 3-11-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The following statement shall be printed in underlined print at the extreme top of a ballot to be used in an election covered by this title: ~~(or in the voting instructions for a voting machine)~~ "It is a crime to falsify this ballot or to violate Indiana election laws."

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SECTION 23. IC 3-11-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. All written or printed instructions must be at the top of the ballot ~~(or above the ballot labels on a voting machine)~~ immediately below the statement required by section 7 of this chapter. No other instructions or writing may appear at any other place on the ballot, including the ballot for federal and state offices, except as specified by this title. The instructions must be in English and any other language that the board considers necessary, clear, concise, and written so that a voter will not be confused about the effect of the voter's voting mark and vote.

SECTION 24. IC 3-11-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The name or title of the political party or independent ticket described in section 6 of this chapter shall be placed at the top of the ballot. The device of the political party or independent ticket shall be placed immediately under the name of the political party or independent ticket. The instructions for voting a straight party ticket shall be placed to the right of the device, or if the ballot is part of a direct recording electronic voting system:

- (1) the instructions for voting a straight party ticket; and
- (2) the statement concerning presidential electors required under IC 3-10-4-3;

may be posted in any location within the voting booth that permits the voter to easily read the instructions instead of on the ballot face.

(b) The instructions for voting a straight party ticket must conform as nearly as possible to the following: "To vote a straight (insert political party name) ticket for all (political party name) candidates on this ballot, make a voting mark on or in this circle and do not make any other marks on this ballot. If you wish to vote for a candidate seeking a nonpartisan office or on a public question, you must make another voting mark on the appropriate place on this ballot."

(c) If the ballot contains an independent ticket described in section 6 of this chapter and at least one (1) other independent candidate, the ballot must also contain a statement that reads substantially as follows: "A vote cast for an independent ticket will only be counted for the candidates for President and Vice President or governor and lieutenant governor comprising that independent ticket. This vote will NOT be counted for any OTHER independent candidate appearing on the ballot."

(d) The ballot must also contain a statement that reads substantially as follows: "A write-in vote will NOT be counted unless the vote is for a DECLARED write-in candidate. To vote for a write-in candidate, you

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1 must make a voting mark on or in the square to the left of the name you
2 have written in or your vote will not be counted.".

3 (e) Except for variations in ballot arrangement permitted for ~~voting~~
4 ~~machines under IC 3-11-12-7~~, ballot card voting systems under
5 IC 3-11-13-11, or electronic voting systems under IC 3-11-14-7, the list
6 of candidates of the political party shall be placed immediately under
7 the instructions for voting a straight party ticket. The names of the
8 candidates shall be placed three-fourths (3/4) of an inch apart from
9 center to center of the name. The name of each candidate must have,
10 immediately on its left, a square three-eighths (3/8) of an inch on each
11 side.

12 (f) The election division or the circuit court clerk may authorize the
13 printing of ballots containing a ballot variation code to ensure that the
14 proper version of a ballot is used within a precinct.

15 SECTION 25. IC 3-11-2-12.9 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.9. (a) School board
17 offices to be elected at the general election shall be placed on the
18 general election ballot after the offices described in section 12 of this
19 chapter.

20 (b) School board offices shall be placed in a separate column on the
21 ballot or ballot label if voting is by paper ballot, ballot card voting
22 system, or electronic voting system. ~~or in a separate column of ballot~~
23 ~~labels if voting is by voting machine.~~

24 (c) This subsection applies to voting done by paper ballot or a ballot
25 card voting system. If the ballot contains a candidate for a school board
26 office, the ballot must also contain a statement that reads substantially
27 as follows:

28 "To vote for a candidate for this office, make a voting mark on or
29 in the square to the left of the candidate's name."

30 SECTION 26. IC 3-11-2-13 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) The following
32 offices and public questions shall be placed on the general election
33 ballot in the following order after the offices described in section 12.9
34 of this chapter:

- 35 (1) Retention of a justice of the supreme court.
- 36 (2) Retention of a judge of the court of appeals.
- 37 (3) Retention of the judge of the tax court.
- 38 (4) Ratification of a state constitutional amendment.

39 (b) Whenever more than one (1) justice of the supreme court is
40 subject to retention, the name of each justice must appear on the ballot
41 in alphabetical order. However, if the justice serving as chief justice is
42 subject to retention, the chief justice's name must appear first.

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(c) Whenever more than one (1) judge of the court of appeals is subject to retention, the name of each judge must appear on the ballot in alphabetical order. However, if the judge serving as chief judge is subject to retention, the chief judge's name must appear first.

(d) These offices and public questions shall be placed in a separate column on the ballot or ballot label if voting is by paper ballot, ballot card voting system, or electronic voting system. ~~or in a separate column of ballot labels if voting is by voting machine.~~

SECTION 27. IC 3-11-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) The following offices and public questions shall be placed on the general election ballot in the following order after the offices and public questions described in section 13 of this chapter:

(1) Retention of a local judge.

(2) Local nonpartisan judicial offices.

(3) Local public questions.

(b) These offices and public questions shall be placed in a separate column on the ballot or ballot label if voting is by paper ballot, ballot card voting system, or electronic voting system. ~~or in a separate column of ballot labels if voting is by voting machine.~~

(c) If the ballot contains a candidate for a local nonpartisan judicial office, the ballot must also contain a statement that reads substantially as follows: "To vote for a candidate for this office, make a voting mark on or in the square to the left of the candidate's name."

(d) If more than one (1) local public question concerning the retention of a local judge is to be placed on a ballot, the public questions shall be placed on the ballot:

(1) in alphabetical order according to the surname of the local judge; and

(2) identifying the court (including division or room) in which the judge serves.

SECTION 28. IC 3-11-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~(a)~~ If, in the judgment of a county election board, the number of voters in a precinct of the county where a voting **machine system** is used for voting is so large that the **machine voting system** in use will not be sufficient to register the vote of all the voters in the precinct, the board may use paper ballots in addition to the ~~machine~~ **voting system**. The voting by paper ballot is subject to all the restrictions prescribed by this article.

~~(b) The county election board shall then notify the election division of the board's determination and of the estimated number of state and presidential ballots that will be required in the precinct.~~

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SECTION 29. IC 3-11-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. The county election board shall deliver the following to each inspector or the inspector's representative:

~~(1) The sealed package of paper ballots, provisional ballots, sample ballots, and any other supplies provided for the inspector's precinct by the election division.~~

~~(2) (1) The local sample ballots, the ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.~~

~~(3) (2) The local ballots printed under the direction of the county election board as follows:~~

(A) The number of ballots equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.

(B) In those precincts where voting machines, ballot card systems, or electronic voting systems are to be used, the number of paper ballots that will be required for emergency purposes only.

(C) Provisional ballots in the number considered necessary by the county election board.

~~(4) (3) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.~~

~~(5) (4) Copies of the voter's bill of rights for posting as required by 42 U.S.C. 15482.~~

~~(6) (5) Copies of the instructions for a provisional voter required by 42 U.S.C. 15482. The county election board shall provide at least the number of copies of the instructions as the number of provisional ballots provided under subdivision (3).~~ **subdivision (2).**

SECTION 30. IC 3-11-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) The ~~local~~ ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the ballots. The ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready for the

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reception of votes.

(b) The local provisional ballots delivered to the inspector of each precinct under section 11 of this chapter shall be placed in a strong and stout paper envelope or bag, separate from the bag described in subsection (a), which shall then be tightly closed, fastened securely, and attested by the initials of the circuit court clerk or the clerk's designee in the presence of the inspector or the inspector's representative. The inspector shall sign a receipt for the provisional ballots. The provisional ballot packages may not be opened until:

(1) they have been delivered to the precinct election board to which they are directed; and

(2) the precinct election board is fully organized and ready to receive votes.

SECTION 31. IC 3-11-3-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. (a) Each county election board shall have printed in at least 14 point type on cards in English, braille, and any other language that the board considers necessary, the following:

(1) Instructions for the guidance of voters in preparing their ballots.

(2) Instructions explaining the procedure for write-in voting.

(3) Write-in voting notice cards that must be posted in each precinct that utilizes a ~~voting machine~~ or ballot card voting system that does not permit write-in voting. The notice cards must direct voters who want to cast write-in votes to request a write-in ballot from an election official.

(b) The board shall furnish the number of cards it determines to be adequate for each precinct to the inspector at the same time the board delivers the ballots for the precinct and shall furnish a magnifier upon request to a voter who requests a magnifier to read the cards.

SECTION 32. IC 3-11-3-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. (a) This section applies to a county having a population of more than four hundred thousand (400,000), but less than seven hundred thousand (700,000).

(b) In each precinct where voting is by ~~voting machine~~ or electronic voting system, the county election board shall provide the following to be used if a ~~voting machine~~ or an electronic voting system malfunctions:

(1) The following number of paper ballots:

(A) Not less than ten (10) if the number of registered voters in the precinct is not more than three hundred (300).

(B) Not less than twenty-five (25) if the number of registered

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1 voters in the precinct is more than three hundred (300).

2 (2) The necessary supplies and equipment as required by
3 IC 3-11-11.

4 (c) Upon notice that ~~a voting machine~~ or an electronic voting system
5 is out of order or fails to work, the precinct election board shall make
6 the paper ballots provided under subsection (b) available to voters. The
7 precinct election board shall contact the county election board to obtain
8 additional ballots.

9 (d) Upon notice that ~~a voting machine~~ or an electronic voting system
10 is out of order or fails to work, the county election board shall deliver
11 additional necessary supplies to any precinct in the county, including
12 additional paper ballots.

13 SECTION 33. IC 3-11-6-1 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The legislative body
15 of a county may establish a cumulative fund under IC 6-1.1-41 to
16 provide funds for the purchase of ~~voting machines~~, ballot card voting
17 systems or electronic voting systems.

18 SECTION 34. IC 3-11-6.5-6.1 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6.1. (a) When
20 approving applications for reimbursement for voting systems under this
21 chapter, the budget agency shall give priority to approving applications
22 to replace a punch card voting system or voting machine system.

23 **(b) This section expires January 1, 2006.**

24 SECTION 35. IC 3-11-7-1 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. ~~(a)~~ The commission
26 must approve a ballot card voting system before it may be used in an
27 election.

28 ~~(b) After June 30, 2001, the commission may not approve a punch~~
29 ~~card voting system for use in an election.~~

30 SECTION 36. IC 3-11-7-4 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. A ballot card voting
32 system must permit a voter to vote either:

33 (1) a straight party ticket for all of the candidates of a political
34 party by a single mark ~~or punch~~ on each ballot card;

35 (2) a split ticket for the candidates of different political parties
36 and for independent candidates; or

37 (3) a straight party ticket and then split that ticket by casting
38 individual votes for candidates of another political party or
39 independent candidate.

40 SECTION 37. IC 3-11-7-12 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The
42 commission shall:

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(1) **require the vendor to have tests conducted concerning the suitability compliance of a ballot card voting system with HAVA and the standards set forth in this chapter and IC 3-11-15; and**

(2) **have the results of the tests evaluated by the person designated under IC 3-11-16;**
before determining whether to approve the application for certification of a ballot card voting system.

(b) **The tests required under this section must be performed by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this section.**

(c) **A ballot card voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.**

(d) **An approval of a ballot card voting system under this chapter expires on the date specified in section 19(a) of this chapter.**

SECTION 38. IC 3-11-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) **A vendor may apply for approval of a proposed improvement or change to a ballot card voting system shall be reported to the election division by:**

(1) ~~the vendor, if a vendor is involved in the proposed change;~~
and

(2) ~~the county election board, if a county is proposing the change;~~
that is currently certified by the commission. A proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the **application for the** improvement or change is approved by the commission.

(b) ~~A report of~~ **An application for approval of an** improvement or change must be in the form prescribed by the commission.

(c) **The vendor applying for approval of an improvement or change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.**

(~~c~~) (d) ~~The election division (or a competent~~ **the person designated by the commission to act on behalf of the election division under IC 3-11-16)** shall review the **proposed** improvement or change to the voting system and report the results of the review to the commission. The commission shall determine, within a reasonable period of time, whether the improvement or change impairs the accuracy, efficiency,

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capacity, or ability to meet the requirements of this chapter or the standards adopted by the commission under section 2 of this chapter.

The review must indicate:

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would comply with HAVA and the standards set forth in this chapter and IC 3-11-15.

(d) (e) After the commission has approved the application for an improvement or change to a ballot card voting system, the improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.

(f) An approval of an application under this section expires on the date specified under section 19(a) of this chapter.

SECTION 39. IC 3-11-7-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. The commission may not approve the **marketing, sale, lease, installation, or implementation** of a ballot card voting system by a vendor if the commission finds that the system fails to meet all statutory requirements.

SECTION 40. IC 3-11-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) The election division (or a ~~competent~~ the person designated by the commission to act on behalf of the election division under IC 3-11-16) may periodically examine a ballot card voting system that the commission has previously approved to determine if **whether** the system is still in compliance with all statutory requirements **and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.**

(b) If the election division or competent person finds that a system examined under **does not comply with** subsection (a), ~~fails to meet all requirements and standards; and the commission concurs in these findings; the commission may by unanimous vote of all of the members of the commission;~~ rescind the commission's approval of the voting system.

(c) If the commission's approval is rescinded under subsection (b), the commission may ~~by unanimous vote of all of the members of the commission;~~

(1) recommend that use of the system be discontinued; and

(2) prohibit the system from being **installed, implemented,**

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1 leased, marketed, **used, permitted to be used**, or sold for use in
 2 Indiana in an election conducted under this title.

3 (d) This subsection applies to a ballot card voting system approved
 4 for its initial certification before:

5 (1) March 25, 1992; or

6 (2) a revision of IC 3-11-15 enacted after July 1, 1997; that
 7 imposes additional standards that did not apply to the voting
 8 system at the time of the system's initial certification.

9 The commission may, by unanimous consent of its entire membership,
 10 require the voting system to be tested by an independent authority
 11 designated by the commission. The vendor shall pay any testing
 12 expenses under this subsection.

13 (e) If the independent testing authority determines that a voting
 14 system tested under subsection (d) does not comply with this article,
 15 the commission may, by unanimous consent of its entire membership,
 16 prohibit the system from being leased, marketed, or sold for use in
 17 Indiana in an election conducted under this title.

18 SECTION 41. IC 3-11-7-18 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) The
 20 commission may require a county executive **to shall** file a copy of all
 21 contracts, leases, or purchase orders, including modifications, for the
 22 sale or lease of voting equipment, systems, or software with the
 23 election division.

24 (b) The election division may advise or instruct county officials on
 25 the content of the documents listed in subsection (a) **must be filed not**
 26 **later than thirty (30) days after the date of approval of the**
 27 **contract, lease, or purchase order by the county executive.**

28 SECTION 42. IC 3-11-7-19 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) Except as
 30 provided in subsection (g), the approval of a ballot card voting system
 31 under this chapter expires **five (5) years after the date the commission**
 32 **approves the system. October 1 of the year following the year in**
 33 **which presidential electors are elected under IC 3-10-2-3.**

34 (b) The vendor of a voting system approved under this chapter may
 35 request that the approval be renewed by filing an application with the
 36 election division.

37 (c) The application described in subsection (b) must identify all
 38 counties that are currently using the voting system. Before **considering**
 39 **the commission considers** the application for renewal, the election
 40 division shall give notice **by regular United States mail** of the
 41 application to the circuit court clerk of each county listed in the
 42 application.

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(d) When the commission considers the application, the commission shall request comments regarding the renewal of the application from any interested person. **Before acting on the application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.**

(e) The commission may, by unanimous consent of its entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(f) **After receiving the report under subsection (d) and receiving comments from interested persons,** the commission shall approve an application for renewal under this section if the commission finds that the voting system:

- (1) complies with the standards prescribed under this chapter;
- (2) has worked effectively where the system has been used; and
- (3) has been adequately supported by the vendor of the system.

(g) **If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:**

- (1) has not been certified by the commission for use in Indiana; or
- (2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

(h) **A vendor subject to subsection (g) (f) may continue to provide support during the period specified in subsection (g) (f) to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.**

SECTION 43. IC 3-11-7.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A person ~~owning or interested in an electronic voting system may request the election division (or a competent person designated by the commission to act on behalf of the election division) to examine the~~ **submit an application for approval of an electronic voting system and report on its accuracy, efficiency, and capacity. in the form prescribed by the commission.**

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SECTION 44. IC 3-11-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) **The commission shall:**

(1) **require the vendor to have tests conducted concerning the compliance of an electronic voting system with HAVA and the standards set forth in this chapter and IC 3-11-15; and**

(2) **have the results of the tests evaluated by the person designated under IC 3-11-16;**

before determining whether to approve the application for certification of an electronic voting system.

(b) **The tests required under this section must be performed by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses under this section.**

(c) **If the commission finds that an electronic voting system complies with this article, the commission may approve the system. The approved system then may be adopted for use at an election.**

(d) **An electronic voting system may not be marketed, sold, leased, installed, or implemented in Indiana before the application for certification of the system is approved by the commission.**

(e) **An approval of an electronic voting system under this chapter expires on the date specified by section 28(a) of this chapter.**

SECTION 45. IC 3-11-7.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) **A vendor may apply for approval of a proposed improvement or change to an electronic voting system shall be reported to the election division by:**

(1) **the vendor, if a vendor is involved in the proposed change; and**

(2) **the county election board, if a county is proposing the change that is currently certified by the commission. A proposed improvement or change may not be marketed, sold, leased, installed, or implemented in Indiana before the application for the improvement or change is approved by the commission.**

(b) **A report of An application for approval of an improvement or change must be in the form prescribed by the commission.**

(c) **The vendor applying for approval of an improvement or change must have the improvement or change to the voting system tested by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371). The vendor shall pay any testing expenses incurred under this subsection.**

(d) **The election division (or a competent the person designated**

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by the commission to act on behalf of the election division under IC 3-11-16) shall review the improvement or change to the voting system and report the results of the review to the commission. The commission shall determine within a reasonable period of time whether the improvement or change impairs the accuracy, efficiency, capacity, or ability to meet the requirements of this article. The review must indicate:

(1) whether the proposed improvement or change has been approved by an independent laboratory accredited under Section 231 of HAVA (42 U.S.C. 15371); and

(2) whether the proposed improvement or change would comply with HAVA and the standards set forth in this chapter and IC 3-11-15.

(d) (e) After the commission has examined and approved the application for an improvement or change to an electronic voting system, the improvement or change may be marketed, sold, leased, installed, or implemented in Indiana.

(f) An approval of an application under this section expires on the date specified by section 28(a) of this chapter.

SECTION 46. IC 3-11-7.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The commission may not approve the marketing, sale, lease, installation, or implementation of an electronic voting system unless the system meets the specifications in sections 8 through 19 of this chapter and in IC 3-11-15.

SECTION 47. IC 3-11-7.5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. A county executive may adopt and purchase, or procure, lease, install, implement, or authorize the use of an electronic voting system only after the system has been approved by the commission.

SECTION 48. IC 3-11-7.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The election division (or a competent the person designated by the commission to act on behalf of the election division under IC 3-11-16) may periodically examine an electronic voting system that the commission has previously approved to determine if whether that system is still in compliance with all statutory requirements and whether the voting system in use in a county has the same hardware, firmware, and software as the version of the voting system that was certified by the commission.

(b) If the election division or competent person finds that a system examined under does not comply with subsection (a), fails to meet all

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requirements and standards; and the commission concurs in these findings; the commission may by unanimous vote of all of the members of the commission; rescind the commission's approval of the voting system.

(c) If the commission's approval is rescinded under subsection (b), the commission may by unanimous vote of all of the members of the commission:

(1) recommend that use of the system be discontinued; and

(2) prohibit the system from being installed, implemented, leased, marketed, used, permitted to be used, or sold for use in Indiana in an election conducted under this title.

(d) This subsection applies to an electronic voting system approved for its initial certification before:

(1) March 25, 1992; or

(2) a revision of IC 3-11-15 enacted after July 1, 1997; that imposes additional standards that did not apply to the voting system at the time of the system's initial certification.

The commission may, by unanimous consent of its entire membership, require the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(e) If the independent testing authority determines that a voting system tested under subsection (d) does not comply with this article; the commission may, by unanimous consent of its entire membership; prohibit the system from being leased; marketed; or sold for use in Indiana in an election conducted under this title.

SECTION 49. IC 3-11-7.5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) The commission may require a county executive to shall file a copy of all contracts, leases, or purchase orders, including modifications, for the sale or lease of voting equipment, systems, or software with the election division.

(b) The election division may advise or instruct county officials on the content of the documents listed in subsection (a) must be filed not later than thirty (30) days after the date of approval of the contract, lease, or purchase order by the county executive.

SECTION 50. IC 3-11-7.5-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) Except as provided in subsection (g), the approval of an electronic voting system under this chapter expires five (5) years after the date the commission approves the system. October 1 of the year following the year in which presidential electors are elected under IC 3-10-2-3.

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(b) The vendor of a voting system approved under this chapter may request that the approval be renewed by filing an application with the election division.

(c) The application described in subsection (b) must identify all counties that are currently using the voting system. Before the commission considers the application for renewal, the election division shall give notice by regular United States mail of the application to the circuit court clerk of each county listed in the application.

(d) When the commission considers the application, the election division shall request comments regarding the renewal of the application from any interested person. **Before acting on the application for renewal, the commission must receive a report from the person designated under IC 3-11-16 indicating that the hardware, firmware, and software included in the application for renewal of the voting system is identical to the version of the voting system previously certified by the commission.**

(e) The commission may, by unanimous consent of the commission's entire membership, order the voting system to be tested by an independent authority designated by the commission. The vendor shall pay any testing expenses under this subsection.

(f) After receiving the report under subsection (d) and comments from interested persons, the commission shall approve an application for renewal under this section if the commission finds that the voting system:

- (1) complies with the standards prescribed under this chapter;
- (2) has worked effectively where the system has been used; and
- (3) has been adequately supported by the vendor of the system.

(g) If the commission finds that a vendor has marketed, sold, leased, installed, implemented, or permitted the use of a voting system in Indiana that:

- (1) has not been certified by the commission for use in Indiana; or
- (2) includes hardware, firmware, or software in a version that has not been approved for use in Indiana;

the commission may revoke the approval granted under this section and prohibit the vendor from marketing, leasing, or selling any voting system in Indiana for a specific period not to exceed five (5) years.

(h) A vendor subject to subsection (g) subsection (f) may continue to provide support during the period specified in subsection (g) subsection (f) to a county that has acquired a voting system from the vendor after the vendor certifies that the voting system to be supported by the vendor only includes hardware, firmware, and software approved for use in Indiana.

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SECTION 51. IC 3-11-9-2 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A voter who:

(1) is a voter with disabilities; or

(2) is unable to read or write English;

may request assistance in voting before entering the voting booth and designate a person (other than the voter's employer, an officer of the voter's union, or an agent of the voter's employer or union) to assist the voter in voting at an election, as required by 42 U.S.C. 1973aa-6.

(b) This subsection does not apply to a person designated by a voter described by subsection (a) who is voting absentee before two (2) members of the absentee voter board. The person designated must execute a sworn affidavit on a form provided by the precinct election board stating that, to the best of the designated person's knowledge, the voter:

(1) is a voter with disabilities or is unable to read or write English; and

(2) has requested the designated person to assist the voter in voting under this section.

(c) The person designated may then accompany the voter into the voting booth and assist the voter in marking the voter's paper ballot or ballot card or in registering the voter's vote on the ~~voting machine~~ or electronic voting system.

SECTION 52. IC 3-11-9-3 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The following individuals shall assist a voter described by section 2 of this chapter who requests assistance in voting before entering the voting booth but does not wish to designate a person under that section.

(1) The two (2) judges if the voter is voting at a precinct.

(2) Two (2) members of the absentee voter board if the voter is voting absentee.

(b) This subsection does not apply to a person designated by a voter described by subsection (a) who is voting absentee before two (2) members of the absentee voter board. The individuals described in subsection (a) shall execute a sworn affidavit on a form provided by the precinct election board stating that, to the best of the individuals' knowledge, the voter:

(1) is a voter with disabilities or is unable to read or write English;

(2) has requested assistance in voting; and

(3) does not wish to designate a person to assist the voter in voting under section 2 of this chapter.

(c) The two (2) individuals described in subsection (a) shall then accompany the voter into the voting booth to assist the voter in marking

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the voter's paper ballot or ballot card or in registering the voter's vote on the ~~voting machine~~ or electronic voting system.

SECTION 53. IC 3-11-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Before an election at which a ballot card voting system is used, a county election board shall:

- (1) have the marking devices prepared for the election;
- (2) have the marking devices put in order, set and adjusted, and made ready for voting when delivered to the precincts; and
- (3) provide the precinct election officers with marking devices, a demonstration marking device, ~~(except in precincts using optical scan ballots)~~, ballot cards, ballot boxes, ballot labels, and other records and supplies as required.

(b) While acting under subsection (a), the county election board may restrict access to parts of the room where marking devices and other election material are being handled to safeguard this material.

(c) Each county election board shall have each ballot card voting system, along with all necessary furniture and appliances that go with the system at the polls, delivered to the appropriate precinct not later than 6 p.m. of the day before election day. The county executive shall provide transportation for the systems if requested to do so by the county election board.

SECTION 54. IC 3-11-13-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. In partisan elections, the ballot labels must include a voting square or position where a voter may by one (1) mark ~~or punch~~ on each card record a straight party or an independent ticket vote for all the candidates of one (1) political party or the independent ticket, except for offices for which the voter has voted individually for a candidate. If the voter records a vote for the two (2) candidates comprising an independent ticket, the vote must not count for any other independent candidate on the ballot.

SECTION 55. IC 3-11-13-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. ~~(a) This subsection does not apply to an optical scan voting system and expires January 1, 2006. Each ballot card provided under section 17 of this chapter must have two (2) attached perforated stubs on which is printed the same serial number. The top stub shall be bound or stapled in the package of ballot cards retained by the precinct election officers. The following information must be printed on the second stub:~~

- ~~(1) The name of the political subdivision holding the election;~~
- ~~(2) The designation of the election;~~
- ~~(3) The date of the election.~~

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~~(4)~~ The instructions to the voters.

~~(5)~~ In a primary election, the name of the political party.

~~(b)~~ (a) The county election board in a county using a ballot card voting system shall provide ballot cards to the precinct election board that permit voters to cast write-in votes for each officer to be voted for at that election.

~~(c)~~ (b) The ballot cards provided under ~~subsection (b)~~ subsection (a) must be:

(1) designed to be folded; or

(2) accompanied by a secrecy envelope;

to ensure the secrecy of each of the votes cast by a voter.

~~(d)~~ (c) This subsection is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an optical scan voting system. Except as provided in subsection ~~(c)~~; (d), a write-in vote shall be cast by printing the name of the candidate and the title of the office in the space provided for write-in votes on a ballot card or secrecy envelope.

~~(e)~~ (d) Space for write-in voting for an office is not required if there are no declared write-in candidates for that office. However, procedures must be implemented to permit write-in voting for candidates for federal offices.

SECTION 56. IC 3-11-13-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. The test required by section 22 of this chapter must:

~~(1)~~ include the visual inspection of the voting devices for the correct alignment of the card stock and the templates for proper punching;

~~(2)~~ (1) be conducted by processing a preaudited group of ballot cards punched or marked so as to record a predetermined number of valid votes for each candidate and on each public question; and

~~(3)~~ (2) include for each office one (1) or more ballot cards that have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating machines to reject the votes.

SECTION 57. IC 3-11-13-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26. After completion of the count, the tabulating machines shall be sealed. ~~in the same manner as voting machines under IC 3-12-2.5-6.~~ The ballot cards and all other election materials shall be sealed, retained, and disposed of as provided for paper ballots.

SECTION 58. IC 3-11-13-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) After the

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1 delivery of a ballot card voting system to a precinct, the precinct
 2 election board may meet at the polls on the same day and open the
 3 package containing the sample ballot cards, to determine whether the
 4 system is ready for use in accordance with section 16 of this chapter.
 5 If a ballot card voting system is not in compliance with that section, the
 6 board shall immediately label, set and adjust, and place the system in
 7 order or have it done.

8 (b) While acting under subsection (a), the precinct election board
 9 may restrict access to parts of the room where marking devices and
 10 other election material are being handled to safeguard this material.

11 (c) On the morning of election day, the precinct election officers
 12 shall meet at the polls at least one (1) hour before the time for opening
 13 the polls. The inspector then shall have:

- 14 (1) the chute erected;
- 15 (2) the sample ballots and instruction cards posted; and
- 16 (3) everything put in readiness for the commencement of voting
- 17 at the opening of the polls.

18 (d) Before the opening of the polls, the precinct election officers
 19 shall **do the following:**

- 20 (1) Compare the ballot cards used in the marking device with the
- 21 sample ballots furnished and determine whether the names,
- 22 numbers, and letters are in agreement.
- 23 **(2) Determine that the system records that zero (0) votes have**
- 24 **been cast for each candidate and on each public question.**
- 25 **(3) Assure that the system is otherwise in perfect order.**

26 (e) The officers then shall certify that:

- 27 (1) the marking device and the sample ballots are in agreement;
- 28 **(2) the system records zero (0) votes cast; and**
- 29 **(3) the system appears to be in perfect order.**

30 Forms shall be provided for certification, and the certification shall be
 31 filed with the election returns.

32 SECTION 59. IC 3-11-13-28.5 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. (a) Unless
 34 challenged, a voter may proceed to vote.

35 ~~(b) This subsection does not apply to an optical scan voting system.~~
 36 ~~After a voter has signed the poll list, the poll clerk holding the ballot~~
 37 ~~card shall remove the top stub, as described in section 18 of this~~
 38 ~~chapter, and deliver to the voter one (1) of each ballot card that the~~
 39 ~~voter is entitled to vote at the election. The top stub (and any second~~
 40 ~~stub declined by the voter under section 33 of this chapter) shall be~~
 41 ~~retained by the precinct election board and returned to the election~~
 42 ~~board following the close of the polls.~~

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1 ~~(c)~~ **(b)** As each successive voter calls for a ballot, the poll clerks
 2 shall deliver to the voter the first initialed ballot of each type. The
 3 inspector shall then deliver to the poll clerks another ballot of each
 4 type, which the clerks shall initial as before.

5 ~~(d)~~ **(c)** This subsection applies after December 31, 2005, to an
 6 optical scan ballot card ballot tabulated at a central location. As
 7 provided by 42 U.S.C. 15481, when a voter receives an optical scan
 8 ballot card ballot, the board must also provide the voter with:

9 (1) information concerning the effect of casting multiple votes for
 10 an office; and

11 (2) instructions on how to correct the ballot before the ballot is
 12 cast and counted, including the issuance of replacement ballots.

13 SECTION 60. IC 3-11-13-28.7 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.7. (a) The two (2)
 15 poll clerks of each precinct shall place their initials in ink on the
 16 secrecy envelope of a ballot card (or on the fold-over part of a ballot
 17 card described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this chapter) at
 18 the time the card is issued to a voter. The initials must be in the poll
 19 clerk's ordinary handwriting or printing and without a distinguishing
 20 mark of any kind.

21 (b) This subsection is enacted to comply with 42 U.S.C. 15481 by
 22 establishing uniform and nondiscriminatory standards to define what
 23 constitutes a vote on an optical scan voting system. A write-in vote cast
 24 on a secrecy envelope or fold-over envelope:

25 (1) is not valid unless:

26 (A) the secrecy envelope is initialed by both poll clerks; and

27 (B) the vote includes both the name of the write-in candidate
 28 and the office for which the write-in vote is cast; and

29 (2) makes the secrecy envelope or fold-over envelope a ballot for
 30 purposes of this title.

31 SECTION 61. IC 3-11-13-29 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) In addition to
 33 the instructions printed on the ballot card or ballot labels, instructions
 34 to voters shall be posted in each voting booth or placed on the marking
 35 device. Each voter shall be instructed by both judges, on request, on
 36 how to operate the voting device before the voter enters the voting
 37 booth.

38 (b) The instructions posted in the voting booth or placed on the
 39 marking device must state the following:

40 (1) That the voter should examine the ballot card to determine if
 41 it contains the initials of the poll clerks in ink on the back of the
 42 card.

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(2) That the voter should not make an unnecessary mark ~~or punch~~ on the ballot card because the mark ~~or punch~~ may void the card.

(3) That the voter should examine the ballot card to determine if the card has any mark (other than the initials of the poll clerks) before voting.

(4) That the voter should return the ballot card to the poll clerks and request another ballot card if:

(A) the poll clerks' initials have not been properly placed on the card;

(B) the card has a mark (other than the initials of the poll clerks) before the voter places a voting mark on the ballot; or

(C) the voter has improperly marked ~~or punched~~ the card.

(5) That the voter should examine the ballot card after voting to determine that all marks ~~or punches~~ made on the card to indicate the voter's selections have been completely marked. ~~or punched~~.

(c) This subsection applies after December 31, 2005. As provided by 42 U.S.C. 15481, a voter casting an optical scan ballot card under this section must be:

(1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;

(2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 62. IC 3-11-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. When a voter is handed a ballot card, the voter shall be instructed to:

(1) use only the marking device provided for ~~punching, slotting,~~ ~~or~~ marking the cards and that the voter is not to mark a card in any other way;

(2) be certain that the initials of the poll clerks appear on the voter's card and that if the initials are not on the card it will not be counted, except as provided by IC 3-12-1-12; and

(3) place the voter's card in an envelope after the voter has voted or to fold the card in a manner so that no card is exposed upon which a choice is indicated.

SECTION 63. IC 3-11-13-31.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31.7. (a) This section

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1 is enacted to comply with 42 U.S.C. 15481 by establishing uniform and
 2 nondiscriminatory standards to define what constitutes a vote on an
 3 optical scan voting system.

4 (b) After receiving ballot cards, a voter shall, without leaving the
 5 room, go alone into one (1) of the booths or compartments that is
 6 unoccupied and indicate:

7 (1) the candidates for whom the voter desires to vote by ~~punching~~
 8 ~~a hole in~~ or marking the squares immediately beside the
 9 candidates' names; and

10 (2) the voter's preference on each public question by ~~punching a~~
 11 ~~hole in or~~ marking the square beside the word "yes" or "no" under
 12 the question.

13 (c) If an election is a general or municipal election and a voter
 14 desires to vote for all the candidates of one (1) political party or group
 15 of petitioners, the voter may ~~punch a hole in or~~ mark the circle
 16 enclosing the device and beside the name under which the candidates
 17 of the party or group of petitioners are printed. The voter's vote shall
 18 then be counted for all the candidates under that name. However, if the
 19 voter ~~punches a hole in or~~ marks the circle of an independent ticket
 20 comprised of two (2) candidates, the vote shall not be counted for any
 21 other independent candidate on the ballot.

22 SECTION 64. IC 3-11-13-33 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 33. (a) After a voter has
 24 marked a ballot card, the voter shall place it inside the envelope
 25 provided for this purpose or fold the envelope described in section
 26 18(c)(1) of this chapter and return the ballot card to the judge.

27 ~~(b) This subsection does not apply to an optical scan ballot or to a~~
 28 ~~ballot card with a fold-over envelope. The judge shall remove the~~
 29 ~~second stub, as described in section 18 of this chapter, from the~~
 30 ~~envelope and offer the second stub to the voter.~~

31 ~~(e)~~ (b) The judge shall offer to return the envelope with the ballot
 32 card inside to the voter. The voter shall:

33 (1) accept the envelope and deposit it in the ballot box; or

34 (2) decline the envelope and require the judge to deposit it in the
 35 ballot box.

36 ~~(d)~~ (c) If a voter offers to vote a ballot card that is not inside the
 37 envelope provided for this purpose or with the envelope not folded if
 38 the ballot is described in ~~section 18(c)(1)~~ **section 18(b)(1)** of this
 39 chapter, the precinct election board shall direct the voter to return to
 40 the booth and place the ballot card in the envelope provided for this
 41 purpose or fold the envelope.

42 ~~(e)~~ (d) After a voter's ballot cards have been deposited in the ballot

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box, the poll clerks shall make a voting mark after the voter's name on the poll list.

(f) (e) After voting, a voter shall leave the polls. However, a voter to whom ballot cards and a marking device have been delivered may not leave the polls without voting the ballot cards or returning them to the poll clerk from whom the voter received them.

SECTION 65. IC 3-11-13-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. (a) If a voter spoils or defaces a ballot card or marks it erroneously, the voter shall return the card so as not to disclose any choices that the voter has made.

(b) This subsection does not apply to an optical scan ballot. A voter returning a ballot must comply with subsection (a) by folding the stub on the ballot card.

(c) After complying with subsection (b), the voter then may receive another ballot card. Upon receipt of a defective ballot card, the precinct election board shall:

(1) immediately cancel the defective card by writing on the back of the card and stub the word "VOID" in ink or in indelible pencil; and

(2) without detaching any stub attached to the card, place the card in the container for voided ballots in a manner that does not expose the choices of the voter.

SECTION 66. IC 3-11-14-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. (a) This section is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what constitutes a vote on an electronic voting system.

(b) If a voter is not challenged by a member of the precinct election board, the voter may pass the railing to the side where an electronic voting system is and into the voting booth. There the voter shall register the voter's vote in secret by indicating:

(1) the candidates for whom the voter desires to vote by touching a device on or in the squares immediately above the candidates' names;

(2) if the voter intends to cast a write-in vote, a write-in vote by touching a device on or in the square immediately below the candidates' names and printing the name of the candidate in the window provided for write-in voting; and

(3) the voter's preference on each public question by touching a device above the word "yes" or "no" under the question.

(c) If an election is a general or municipal election and a voter desires to vote for all the candidates of one (1) political party or group

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of petitioners, the voter may cast a straight party ticket by touching that party's device. The voter's vote shall then be counted for all the candidates under that name. However, if the voter casts a vote by touching the circle of an independent ticket comprised of two (2) candidates, the vote shall not be counted for any other independent candidate on the ballot.

(d) **This subsection applies after December 31, 2005.** As provided by 42 U.S.C. 15481, a voter casting a ballot on an electronic voting system must be:

- (1) permitted to verify in a private and an independent manner the votes selected by the voter before the ballot is cast and counted;
- (2) provided the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and
- (3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

SECTION 67. IC 3-11-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 14.5. Public Tests of Electronic Voting Systems

Sec. 1. At least fourteen (14) days before election day, the county election board of each county planning to use an electronic voting system at the next election shall randomly select at least three (3) precincts within the county and test the voting system units to be used at those precincts on election day. Each voting system shall be tested to ascertain that the system will correctly count the votes cast for all candidates and on all public questions in that precinct.

Sec. 2. Public notice of the time and place shall be given at least forty-eight (48) hours before the test. The notice shall be published once in accordance with IC 5-3-1-4.

Sec. 3. The two (2) appointed members of the county election board shall observe the test required by this chapter and, if they so determine, shall certify the test as meeting the requirements of this chapter.

Sec. 4. The test must be open to representatives of political parties, candidates, the media, and the public.

Sec. 5. The test required by this chapter must include the following:

- (1) The visual inspection of the voting system and ballot

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labels.

(2) The manual entry of a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate and on each public question.

(3) At least one (1) ballot for each office that has votes in excess of the number allowed by law in order to test the ability of the electronic voting system to reject the overvotes.

Sec. 6. If an error is detected during the test required by section 5 of this chapter, the cause of the error shall be determined and corrected, and an errorless count must be made before the use of the electronic voting system at the election is approved.

Sec. 7. After completion of the count, the voting system shall be sealed. The ballots used to conduct the test and all other election materials shall be sealed, retained, and disposed of as provided for paper ballots.

Sec. 8. Immediately following the completion of the voting system test under section 5 of this chapter, the county election board shall enter the vote totals from the voting systems tested under this chapter into the component of the voting system used by the county election board to tabulate election results under IC 3-12-3.5. The board shall determine whether this component of the voting system properly tabulates the votes cast in each of the precincts tested under this chapter.

Sec. 9. Not later than seven (7) days after conducting the tests required under this chapter, the county election board shall certify to the election division that the tests have been conducted in conformity with this chapter.

Sec. 10. A copy of the certification of the tests conducted under this chapter shall be filed with the election returns.

SECTION 68. IC 3-11-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The performance and test standards and fees under this chapter apply to ~~a~~ **an optical scan voting system or an electronic** voting system ~~procured after March 25, 1992; described in IC 3-11-7 or IC 3-11-7.5.~~

SECTION 69. IC 3-11-15-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. The commission shall not approve any system until the fee and the expenses incurred by the election division (or ~~a competent~~ **the** person designated by the commission to act on behalf of the election division under IC 3-11-16) in making the examination are paid by the person making the application.

SECTION 70. IC 3-11-15-13.3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.3. (a) This section applies after December 31, 2005.

(b) To be approved by the commission for use in Indiana, a voting system must meet the Voting System Standards adopted by the Federal Election Commission on April 30, 2002.

~~(c) The commission may adopt rules under IC 4-22-2 to require a voting system to meet standards more recent than standards described in subsection (b). If the commission adopts rules under this subsection, a voting system must meet the standards described in the rules instead of the standards described in subsection (b).~~

(c) A county may continue to use an optical scan ballot card voting system or an electronic voting system whose approval or certification expired on or before October 1, 2005, if the voting system:

(1) was:

(A) approved by the commission for use in elections in Indiana before July 1, 2003; and

(B) purchased by the county before July 1, 2003; and

(2) otherwise complies with the applicable provisions of HAVA and this article.

However, a voting system vendor may not market, sell, lease, or install a voting system described in this subsection.

(d) As provided by 42 U.S.C. 15481, to be used in an election in Indiana, a voting system must be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

(e) As provided by 42 U.S.C. 15481, an election board conducting an election satisfies the requirements of subsection (d) if the election board provides at least one (1) electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

(f) If a voter who is otherwise qualified to cast a ballot in a precinct chooses to cast the voter's ballot on the voting system provided under subsection (e), the voter must be allowed to cast the voter's ballot on that voting system, whether or not the voter is an individual with disabilities.

SECTION 71. IC 3-11-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 16. Voting System Technical Oversight Program

Sec. 1. As used in this chapter, "program" refers to the voting

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1 system technical oversight program established by section 2 of this
2 chapter.

3 Sec. 2. The voting system technical oversight program is
4 established.

5 Sec. 3. The secretary of state shall contract with a person or an
6 entity to conduct the program for a term specified in the contract.

7 Sec. 4. The person or entity designated under this chapter to
8 conduct the program shall do the following:

9 (1) Develop and propose procedures and standards for the
10 certification, acquisition, functioning, training, and security
11 for voting systems used to conduct elections in Indiana.

12 (2) Compile and maintain an inventory of all voting systems
13 used to conduct elections in Indiana.

14 (3) Review reports concerning voting systems prepared by
15 independent laboratories and submitted by applicants for
16 voting system certification.

17 (4) Recommend to the commission whether an application for
18 voting system certification should be approved and, if so,
19 whether the approval should be subject to any restrictions or
20 conditions to ensure compliance with Indiana law.

21 (5) Perform any additional testing of a voting system
22 necessary to determine whether the voting system complies
23 with state law.

24 (6) Each year perform random audits of voting systems used
25 to conduct Indiana elections and prepare reports indicating
26 whether the voting systems have been certified, programmed,
27 and used in compliance with Indiana law.

28 (7) Review contracts, leases, purchase orders, and
29 amendments to those documents concerning the acquisition or
30 maintenance of voting systems.

31 (8) Assist with the development of quantity purchase
32 agreements and other contracts for the lease or purchase of
33 voting systems.

34 (9) Perform any other duties related to the approval or use of
35 voting systems as provided in:

36 (A) state law; or

37 (B) the contract described in section 3 of this chapter.

38 SECTION 72. IC 3-11-17 IS ADDED TO THE INDIANA CODE
39 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
40 UPON PASSAGE]:

41 **Chapter 17. Voting System Violations**

42 Sec. 1. This chapter applies to a voting system vendor who

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1 markets, sells, leases, installs, implements, or permits the use of a
2 voting system in an election conducted in Indiana.

3 Sec. 2. In addition to any other penalty imposed, a vendor who
4 knowingly, recklessly, or negligently sells, leases, installs,
5 implements, or permits the use of a voting system in an election
6 conducted in Indiana in violation of this title is subject to a civil
7 penalty under this chapter.

8 Sec. 3. If the secretary of state determines that a vendor is
9 subject to a civil penalty under section 2 of this chapter, the
10 secretary of state may assess a civil penalty. The civil penalty
11 assessed under this section may not exceed five hundred thousand
12 dollars (\$500,000), plus any investigative costs incurred and
13 documented by the secretary of state.

14 Sec. 4. The secretary of state is subject to IC 4-21.5 in imposing
15 a civil penalty under this chapter.

16 Sec. 5. All civil penalties collected under this chapter shall be
17 deposited with the treasurer of state in the voting system technical
18 oversight program account established by section 6 of this chapter.

19 Sec. 6. (a) The voting system technical oversight program
20 account is established with the state general fund to provide money
21 for administering and enforcing IC 3-11-7, IC 3-11-7.5, IC 3-11-15,
22 IC 11 3-11-16, and this chapter.

23 (b) The election division shall administer the account. With the
24 approval of the budget agency, funds in the account are available
25 to augment and supplement the funds appropriated to the election
26 division for the purposes described in this section.

27 (c) The expenses of administering the account shall be paid from
28 the money in the account. The account consists of all civil penalties
29 collected under this chapter.

30 SECTION 73. IC 3-12-1-9.5 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9.5. (a) This section
32 applies to counting votes cast on ballot cards.

33 (b) As used in this section, "chad" means the part of a ballot card
34 that indicates a vote on the card when entirely punched out by the
35 voter.

36 (c) A chad that has been pierced, but not entirely punched out of the
37 card, shall be counted as a vote for the indicated candidate or for the
38 indicated response to a public question.

39 (d) A chad that has been indented, but not in any way separated
40 from the remainder of the card, may not be counted as a vote for a
41 candidate or on a public question.

42 (e) Whenever:

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(1) a ballot card contains a numbered box indicating which chad should be punched out by the voter to cast a vote for a candidate or on a public question;

(2) the indicated chad has not been punched out; and

(3) a hole has been made in the card that touches any part of the numbered box;

the hole shall be counted as a vote for the candidate or on the public question as if the indicated chad had been punched out. However, if a hole has been made in the ballot that does not touch a numbered box or punch out a chad, the hole may not be counted as a vote for a candidate or on a public question.

(f) Whenever:

(1) a chad has been punched out of a ballot card;

(2) a numbered box indicates that another chad may be punched out to cast a vote for:

(A) a different candidate for the same office as the candidate for whom a vote was cast under subdivision (1); or

(B) a different response to the same public question on which a vote was cast under subdivision (1); and

(3) a hole has been punched in the card that touches the numbered box described in subdivision (2);

neither the chad described in subdivision (1) nor the hole described in subdivision (3) may be counted as a vote for a candidate or on a public question.

(g) (b) This subsection applies to a ballot card that:

(1) has been cast in a precinct whose votes are being recounted by a local recount commission or the state recount commission;

(2) is damaged or defective so that it cannot properly be counted by automated tabulating machines; and

(3) cannot be counted for the office subject to the recount due to the damage or defect.

The ballot card shall be remade only if the conditions in subdivisions (1) through (3) exist.

SECTION 74. IC 3-12-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. If ~~voting machines~~ or electronic voting systems are used in a precinct, the county election board may request authorization from the state recount commission to inspect the registering counter or other mechanical recording device on any voting machine or electronic voting system showing the number of votes cast for any candidate or public question. If authorized by the state recount commission, the board may conduct an inspection either before it proceeds to count and tabulate the vote or within one (1) day

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1 after the count and tabulation are finished.

2 SECTION 75. IC 3-12-4-19 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. To inspect ~~a voting~~
4 ~~machine or an~~ electronic voting system under section 18 of this
5 chapter, the county election board may proceed to any place in the
6 county where the ~~machine or~~ system is located, kept, or stored.
7 However, the board shall make the inspection in the presence of an
8 accredited representative of each of the major political parties of the
9 county.

10 SECTION 76. IC 3-12-4-20 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. When making an
12 inspection under section 18 of this chapter, a county election board
13 shall compare the number of votes registered on the counter or other
14 ~~mechanical~~ recording device on the ~~voting machines or~~ electronic
15 voting systems with the returns made by the precinct election board of
16 the precinct in which the ~~voting machine or~~ electronic voting system
17 was used.

18 SECTION 77. IC 3-12-4-21 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. If there is a
20 discrepancy between the number of votes registered on ~~a voting~~
21 ~~machine or an~~ electronic voting system and the returns made by the
22 precinct election board, the county election board shall correct the
23 returns made by the precinct election board so that the returns conform
24 to the vote registered on the ~~voting machine or~~ electronic voting
25 system. The corrected returns shall be considered the true and correct
26 returns of the number of votes cast for each candidate or on each public
27 question in the precinct.

28 SECTION 78. IC 3-12-4-22 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. If a nomination or
30 election is contested or a recount is conducted, the returns of each
31 precinct election board, as corrected by the county election board under
32 section 21 of this chapter, constitute prima facie evidence of the vote
33 cast for each candidate and on each public question to the same extent
34 as the tabulation and return of the vote in a precinct where ~~voting~~
35 ~~machines or~~ electronic voting systems are not used.

36 SECTION 79. IC 3-12-6-16 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) A recount
38 commission consists of three (3) persons.

39 (b) Two (2) members of the commission must be voters who:

- 40 (1) are members of different major political parties of the state;
41 and
42 (2) were qualified to vote at the election in a county in which the

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election district for the office is located.

(c) This subsection applies to a recount commission conducting a recount of an election in which only paper ballots were used. The third member of the commission must be a person who:

- (1) is a member of a major political party of the state; and
- (2) was qualified to vote at the election in a county in which the election district for the office is located.

(d) This subsection applies to a recount of an election in which a voting method other than only paper ballots was used. The third member of the commission must be a competent mechanic who is familiar with ~~the voting machines~~, ballot card voting systems or electronic voting systems used in that election. The mechanic is not required to be qualified to vote at the election in a county in which the election district for the office is located.

SECTION 80. IC 3-12-6-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) A court ordering a recount under this chapter shall by order impound and provide for the protection of the following:

- (1) All ballots ~~voting machines~~, and electronic voting systems used at the election for casting votes in the precincts.
- (2) All tally sheets relating to the votes cast for nomination or election to the office.
- (3) All poll lists of persons registered by the poll clerks as having voted for nomination or election to the office.

(b) An order issued by the state recount commission under IC 3-12-10 supersedes an order issued by a court under this section to the extent that the orders conflict. The state recount commission shall assist a court acting under this section to the extent that the ability of the state recount commission to preserve the integrity of election records or equipment is not hindered.

(c) An impoundment order issued under subsection (a) may not prevent a circuit court clerk or board of registration from copying election material other than ballots if the clerk or board copies the material under the supervision of a person designated by the court.

SECTION 81. IC 3-12-6-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. A court acting under section 19 of this chapter shall make the ballots, ~~voting machines~~, electronic voting systems, tally sheets, and poll lists available to the recount commission appointed under this chapter.

SECTION 82. IC 3-12-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. An election may be contested under section 1 of this chapter if a petitioner alleges that one

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(1) of the following circumstances existed:

(1) The contestee was ineligible.

(2) A mistake occurred in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes.

(3) A mistake occurred in the programming of a voting machine or an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.

(4) ~~A voting machine or~~ An electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.

(5) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

SECTION 83. IC 3-12-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A petition filed under section 5 of this chapter must state the following:

(1) That the petitioner desires to contest the nomination or election to an office.

(2) The name of each candidate as set forth on the ballot for the election and address of each candidate as set forth in the records of the county election board or election division.

(3) That the petitioner in good faith believes that one (1) or more of the following occurred:

(A) The person declared nominated or elected does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for the office.

(B) A mistake was made in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes cast in the election.

(C) A mistake occurred in the programming of ~~a voting machine or~~ an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.

(D) ~~A voting machine or~~ An electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.

(E) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

(b) A petition stating that the petitioner believes that it is impossible

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to determine the candidate that received the highest number of votes for one (1) of the reasons described in subsection (a)(3)(B), (a)(3)(C), or (a)(3)(D) must identify each precinct in which:

(1) ballots:

(A) containing the printing mistake; or

(B) distributed by mistake;

were cast;

(2) a mistake occurred in the programming of ~~a voting machine~~ or an electronic voting system; or

(3) ~~a voting machine~~ or an electronic voting system malfunctioned.

(c) A petition stating that the petitioner believes that an act or series of actions described in subsection (a)(3)(E) occurred must identify each precinct or other location in which the act or series of actions occurred to the extent known to the petitioner.

SECTION 84. IC 3-12-8-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) A contest shall be heard and determined by the court without a jury subject to the Indiana Rules of Trial Procedure.

(b) The court shall determine the issues raised by the petition and answer to the petition.

(c) After hearing and determining a petition alleging that a candidate is ineligible, the court shall declare as elected or nominated the qualified candidate who received the highest number of votes and render judgment accordingly.

(d) If the court finds that:

(1) a mistake in the printing or distribution of the ballots used in the election;

(2) a mistake in the programming of ~~a voting machine~~ or an electronic voting system;

(3) a malfunction of ~~a voting machine~~ or an electronic voting system; or

(4) the occurrence of a deliberate act or series of actions;

makes it impossible to determine which candidate received the highest number of votes, the court shall order that a special election be conducted under IC 3-10-8.

(e) The special election shall be conducted in the precincts identified in the petition in which the court determines that:

(1) ballots containing the printing mistake or distributed by mistake were cast;

(2) a mistake occurred in the programming of ~~a voting machine~~ or an electronic voting system;

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(3) ~~a voting machine~~ or an electronic voting system malfunctioned; or

(4) the deliberate act or series of actions occurred.

SECTION 85. IC 3-12-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Each petition for a recount filed under section 2 of this chapter must state the following:

(1) The office for which the petitioner desires a recount.

(2) The precincts in which the petitioner desires a recount.

(3) That the individual is entitled to a recount under this chapter and that the nomination or election to office at issue was voted upon in the precincts specified.

(4) The name of the candidates as set forth on the ballot for the election and address of the candidates as set forth in the records of the election division.

(5) That the petitioner in good faith believes that the votes cast for nomination or election to the office at the election in the precincts were not correctly counted and returned.

(6) That the petitioner desires a recount of all of the votes cast for nomination or election to the office in the precincts specified.

(b) Each petition for a contest filed under section 2 of this chapter must state the following:

(1) The nomination or election to office that the petitioner contests.

(2) That the individual is entitled to contest an election or a nomination to office under this chapter.

(3) The name of the candidates as set forth on the ballot for the election and address of each of the candidates as set forth in the records of the election division.

(4) That the petitioner in good faith believes that one (1) or more of the following occurred:

(A) The person declared nominated or elected does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for the office.

(B) A mistake was made in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes cast in the election.

(C) A mistake occurred in the programming of ~~a voting machine~~ or an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.

(D) ~~A voting machine~~ or An electronic voting system

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1 malfunctioned, making it impossible to determine the
2 candidate who received the highest number of votes.

3 (E) A deliberate act or series of actions occurred making it
4 impossible to determine the candidate who received the
5 highest number of votes cast in the election.

6 (c) A petition stating that the petitioner believes that a mistake
7 described in subsection (b)(4)(B), (b)(4)(C), or (b)(4)(D) has occurred
8 must identify each precinct in which:

- 9 (1) ballots:
10 (A) containing the printing mistake; or
11 (B) distributed by mistake;
12 were cast;
13 (2) a mistake occurred in the programming of a ~~voting machine~~
14 ~~or~~ an electronic voting system; or
15 (3) a ~~voting machine~~ or an electronic voting system
16 malfunctioned.

17 (d) A petition stating that the petitioner believes that an act or series
18 of actions described in subsection (b)(4)(E) occurred must identify
19 each precinct or other location in which the act or series of actions
20 occurred to the extent known to the petitioner.

21 SECTION 86. IC 3-12-11-16 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) Except as
23 provided in subsection (b), the state recount commission may by order
24 impound and provide for the protection of the following:

- 25 (1) All ballots ~~voting machines~~, and electronic voting systems
26 used at the election for casting votes in the precincts.
27 (2) All tally sheets relating to the votes cast for the office.
28 (3) All poll lists of persons registered by the poll clerks as having
29 voted for the office.

30 (b) In a recount of an election for a legislative office, the state
31 recount commission shall by order impound and provide for the
32 protection of the following:

- 33 (1) All ballots ~~voting machines~~, and electronic voting systems
34 used at the election for casting votes in all of the precincts within
35 the legislative district.
36 (2) All tally sheets relating to the votes cast for the office.
37 (3) All poll lists of persons registered by the poll clerks as having
38 voted for the office.

39 SECTION 87. IC 3-12-11-18 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) When a recount
41 is completed by the state recount commission or its designee, the
42 commission shall:

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(1) make and sign a certificate showing the total number of votes received in the precincts by each candidate for nomination or election to the office;

(2) state in its certificate the candidate who received the highest number of votes in the precincts for nomination or election to the office and by what plurality; and

(3) file its certificate with the election division.

(b) When a contest proceeding in which a candidate is alleged to be ineligible is completed by the state recount commission or its designee, the commission shall make a final determination concerning the eligibility of the candidate for nomination or election to the office.

(c) If the state recount commission or its designee determines that:

(1) a mistake was made in the printing or distribution of ballots used in the election;

(2) a mistake was made in the programming of a ~~voting machine~~ or an electronic voting system;

(3) a ~~voting machine~~ or an electronic voting system malfunctioned; or

(4) a deliberate act or series of actions occurred;

that makes it impossible to determine which candidate received the highest number of votes cast, the commission shall order that a special election be conducted under IC 3-10-8.

(d) The special election ordered under subsection (c) shall be held in the precincts identified in the petition in which the commission determines that:

(1) ballots containing the printing mistake or distributed by mistake were cast;

(2) a mistake occurred in the programming of a ~~voting machine~~ or an electronic voting system;

(3) a ~~voting machine~~ or an electronic voting system malfunctioned; or

(4) a deliberate act or series of actions occurred.

SECTION 88. IC 3-14-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. A precinct election officer who, with the intent to cause or permit a ~~voting machine~~, ballot card voting system or electronic voting system to fail to correctly register all votes cast, tampers with or disarranges the machine or system or any part of it commits a Class D felony.

SECTION 89. IC 3-14-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. A precinct election officer who permits a ~~voting machine~~, ballot card voting system or electronic voting system to be used for voting at an election, with

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1 knowledge of the fact that the ~~machine~~ or system is not in order or not
 2 perfectly set and adjusted so that it will correctly register all votes cast,
 3 commits a Class D felony.

4 SECTION 90. IC 3-14-3-7 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. An inspector or poll
 6 clerk in a precinct who, for the purpose of:

- 7 (1) deceiving a voter;
- 8 (2) causing it to be doubtful for what ticket, candidate, or public
 9 question a vote is cast; or
- 10 (3) causing it to appear that votes cast for one ticket, candidate, or
 11 public question were cast for another ticket, candidate, or public
 12 question;

13 removes, changes, or mutilates a ballot label on a voting ~~machine~~
 14 **system** or any part thereof commits a Class D felony.

15 SECTION 91. IC 3-14-3-8 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. A person other than
 17 a precinct election officer who knowingly, before or during an election:

- 18 (1) damages, disarranges, or tampers with a ~~voting machine~~;
 19 ballot card system or electronic voting system; or
- 20 (2) damages a ballot label placed or to be placed on the ~~machine~~;
 21 electronic voting system or any other appliance used in
 22 connection with the ~~machine~~; ballot card voting system or
 23 electronic voting system;

24 commits a Class D felony.

25 SECTION 92. IC 3-14-4-8 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. A member of a
 27 precinct election board, an absentee ballot counter appointed under
 28 IC 3-11.5-4-22, or a provisional ballot counter appointed under
 29 IC 3-11.7-3 who knowingly:

- 30 (1) opens or marks, by folding or otherwise, a ballot presented by
 31 a voter, except as provided by law; or
- 32 (2) tries to find out how the voter voted before the ballot is
 33 deposited in the ballot box or cast on a ~~voting machine~~; ballot
 34 card voting system or electronic voting system or counted by the
 35 absentee ballot counter;

36 commits a Class D felony.

37 SECTION 93. THE FOLLOWING ARE REPEALED [EFFECTIVE
 38 UPON PASSAGE]: IC 3-5-2-21.5; IC 3-11-15-10; IC 3-11-15-11;
 39 IC 3-11-15-50; IC 3-11-15-51; IC 3-11-15-52; IC 3-11-15-53;
 40 IC 3-11-15-55; IC 3-11-15-56; IC 3-11-15-57; IC 3-11-15-58.

41 SECTION 94. THE FOLLOWING ARE REPEALED [EFFECTIVE
 42 JULY 1, 2005]: IC 3-5-2-41.5; IC 3-5-2-41.6; IC 3-5-2-50.6;

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1 IC 3-11-3-2; IC 3-11-3-6; IC 3-11-5; IC 3-11-7.5-20; IC 3-11-12;
 2 IC 3-11-13-20; IC 3-12-2.5.

3 SECTION 95. [EFFECTIVE UPON PASSAGE] (a) The definitions
 4 set forth in IC 3-5-2 apply to this SECTION.

5 (b) To perform the duties set forth in IC 3-11-16, as added by
 6 this act, in establishing the voting system technical oversight
 7 program, the secretary of state shall issue a request for proposals
 8 to enter into the contract required under IC 3-11-16-3.

9 (c) Notwithstanding any other statute or rule:

10 (1) the secretary of state shall extend invitations to public and
 11 private colleges and universities located within Indiana to
 12 respond to the request for proposals not later than June 1,
 13 2005; and

14 (2) the secretary of state and the person selected by the
 15 secretary of state shall enter into the contract required under
 16 IC 3-11-16-3 not later than July 1, 2005.

17 (d) This SECTION expires December 31, 2005.

18 SECTION 96. [EFFECTIVE UPON PASSAGE] (a) The definitions
 19 set forth in IC 3-5-2 apply to this SECTION.

20 (b) This SECTION applies to a county:

21 (1) that used a punch card ballot voting system to conduct the
 22 November 2, 2004, general election in any precinct in the
 23 county; and

24 (2) whose county executive, before July 1, 2005, has not
 25 entered into a contract that complies with this SECTION.

26 (c) To comply with this SECTION, a contract that a county
 27 executive enters into must require a voting system vendor to
 28 deliver, not later than December 31, 2005:

29 (1) an electronic voting system;

30 (2) an optical scan ballot voting system; or

31 (3) a combination of both systems;

32 certified for installation, marketing, and use in Indiana on the
 33 effective date of the contract.

34 (d) If a county described in subsection (b) fails to enter into a
 35 contract that complies with subsection (c) before July 1, 2005, the
 36 secretary of state may enter into a quantity purchase agreement
 37 with a voting system vendor for the purchase of:

38 (1) an electronic voting system;

39 (2) an optical scan ballot voting system; or

40 (3) a combination of both systems;

41 that is certified for installation, marketing, and use in Indiana on
 42 the effective date of the contract.

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1 (e) The agreement described in subsection (d) must require the
 2 delivery of the voting system to each county described in this
 3 SECTION before January 1, 2006, for use in all elections
 4 conducted in the county after December 31, 2005.
 5 (f) This SECTION expires December 31, 2006.
 6 SECTION 97. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill No. 499, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 5. IC 3-5-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. "Marking device" means:

- (1) an apparatus in which paper ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter;
- (2) (1) a pencil for marking a paper ballot or ballot card; or
- (3) (2) an approved touch-sensitive device that automatically registers a vote on an electronic voting system.

SECTION 6. IC 3-5-2-48.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 48.5. "Testing authority" means an independent test authority ~~as described in:~~ **or independent laboratory:**

- (1) **as described in the** Voting System Standards issued by the Federal Election Commission on April 30, 2002; or
- (2) ~~other more recent voting systems standards adopted by the commission under IC 3-11-15-13:~~ **accredited under Section 231 of HAVA (42 U.S.C. 15371):**".

Page 34, line 24, delete "Evaluation" and insert "**Oversight**".

Page 45, line 21, after "PASSAGE]:" insert "IC 3-5-2-21.5;".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 499 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 9, Nays 0.

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